

NATURAL RESOURCES CODE

CHAPTER 63. DUNES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 63.001. FINDINGS OF FACT. The legislature finds and declares:

(1) that the mainland gulf shoreline, barrier islands, and peninsulas of this state contain a significant portion of the state's human, natural, and recreational resources;

(2) that these areas are and historically have been wholly or in part protected from the action of the water of the Gulf of Mexico and storms on the Gulf by a system of vegetated and unvegetated sand dunes that provide a protective barrier for adjacent land and inland water and land against the action of sand, wind, and water;

(3) that certain persons have from time to time modified or destroyed the effectiveness of the protective barriers and caused environmental damage in the process of developing the shoreline for various purposes;

(4) that the operation of recreational vehicles and other activities over these dunes have destroyed the natural vegetation on them;

(5) that these practices constitute serious threats to the safety of adjacent properties, to public highways, to the taxable basis of adjacent property and constitute a real danger to natural resources and to the health, safety, and welfare of persons living, visiting, or sojourning in the area;

(6) that it is necessary to protect these dunes as provided in this chapter because stabilized, vegetated dunes offer the best natural defense against storms and are areas of significant biological diversity;

(7) that vegetated stabilized dunes help preserve state-owned beaches and shores by protecting against erosion of the shoreline; and

(8) that different areas of the coast are characterized by dunes of various types and values, all of which should be afforded protection.

Acts 1977, 65th Leg., p. 2499, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 1, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, Sec. 18, eff. June 7, 1991.

Sec. 63.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Barrier island" means an island bordering on the Gulf of Mexico and entirely surrounded by water.

(3) "Peninsula" means an arm of land bordering on the Gulf of Mexico surrounded on three sides by water.

(4) "Recreational vehicle" means a dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle that is being used for recreational purposes, but does not include any vehicle not being used for recreational purposes.

(5) "Mainland shoreline" means all shoreline fronting on the open Gulf of Mexico that is not located on a barrier island or a peninsula.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 2, eff. Aug. 26, 1985.

Sec. 63.003. EFFECT OF CHAPTER. The provisions of this chapter do not apply to any dune area not accessible by public road or common carrier ferry facility for as long as that condition exists.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 3, eff. Aug. 26, 1985.

SUBCHAPTER B. DUNE PROTECTION LINE

Sec. 63.011. ESTABLISHING DUNE PROTECTION LINE. (a) After notice and hearing, the commissioners court of each county that has within its boundaries mainland shoreline, a barrier island, or a peninsula located on the seaward shore of the Gulf of Mexico shall establish a dune protection line on any such shoreline, island, or peninsula within its boundaries for the purpose of preserving sand dunes.

(b) A county may allow a municipality within the county to administer this chapter within its corporate limits and extraterritorial jurisdiction. On delegation by a county, a municipality may adopt and apply any appropriate ordinances within

its extraterritorial jurisdiction to effect the purposes of this chapter.

(c) Municipalities and counties may enter into interlocal cooperation contracts for the administration of dune permit programs under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

(d) The land office may assist and advise counties and municipalities in establishing or altering dune protection lines. Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 3, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, Sec. 19, eff. June 7, 1991.

Sec. 63.012. LOCATION OF DUNE PROTECTION LINE. The dune protection line shall not be located further landward than a line drawn parallel to and 1,000 feet landward of the line of mean high tide of the Gulf of Mexico.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 63.013. NOTICE. (a) Notice of a hearing to consider establishing the dune protection line shall be published at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing.

(b) Notice shall be given to the commissioner not less than one week nor more than three weeks before the hearing.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 63.014. MAP AND DESCRIPTION OF DUNE PROTECTION LINE. (a) The commissioners court or governing body of each municipality in establishing a dune protection line shall define the line by presenting it on a map or drawing, by making a written description, or by both. Each shall be designated appropriately and filed with the clerk of the county or municipality establishing the line and with the commissioner.

(b) Notice of alterations in the dune protection line shall be filed with the clerk and with the commissioner, and the appropriate changes shall be made on the map, drawing, or description.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 20, eff. June 7, 1991.

Sec. 63.015. DUNE PROTECTION LINE PROHIBITED. No dune protection line may be established within a state or national park area, wildlife refuge, or other designated state or national natural area; provided, however, any state-owned or other public land not specifically exempted by this section shall be subject to the same requirements as private lands except as provided in Sections 31.161 through 31.167 of this code.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 21, eff. June 7, 1991.

SUBCHAPTER C. PERMITS

Sec. 63.051. PERMIT REQUIREMENT. An owner of land or a person holding an interest in land under the owner who desires to perform or allow any of the acts prohibited in Section 63.091 of this code must apply for a permit from the appropriate commissioners court or municipal governing body.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 22, eff. June 7, 1991.

Sec. 63.052. PERMIT NOT REQUIRED. No permit is required for the following activities:

- (1) grazing livestock;
- (2) production of oil and gas; and
- (3) recreational activity other than the operation of a recreational vehicle.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 63.053. FEES. (a) The commissioners court or governing body of the municipality may require a reasonable fee to accompany the application.

(b) Any commissioners court or governing body of a municipality that has adopted a dune protection line and is administering this chapter and that has a certified beach access plan as provided for in Section 61.015 of this code is hereby authorized, subject to all requirements of Chapter 61 of this code,

to charge reasonable fees that do not exceed the cost for the provision and maintenance of public beach related facilities and services necessary to implement such plans, including but not limited to parking, public health and safety, environmental protection and matters contained in the certified beach access plans, and that do not unfairly limit access to and use of such beaches.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 23, eff. June 7, 1991.

Sec. 63.054. REVIEW. (a) The commissioners court or governing body of the municipality shall evaluate the permit application, and if the commissioners court or governing body of the municipality finds as a fact after full investigation that the particular conduct proposed will not materially weaken the dune or materially damage vegetation on the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, it may grant the permit.

(b) In determining whether or not to grant the permit, the commissioners court or governing body of the municipality shall consider the height, width, and slope of the dune, any significant environmental features of the dune, the feasibility and desirability of restoration of vegetation, and cumulative impacts and shall consider requirements for protection of critical dune areas.

(c) Each county or municipality administering this chapter shall establish procedures and requirements governing the review and approval of dune permits, and these procedures and requirements shall be submitted to the commissioner for comments.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 24, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 7, eff. June 18, 2003.

Sec. 63.055. TERMS AND CONDITIONS OF PERMIT. The commissioners court or governing body of the municipality may include in a permit the terms and conditions it finds necessary to assure the protection of life, natural resources, and property.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 25, eff. June 7, 1991.

Sec. 63.056. NOTICE TO AND COMMENTS OF COMMISSIONER ON PERMITS. (a) After receiving an application for a permit to perform any of the acts prohibited in Section 63.091 of this code, the commissioners court or the governing body of the municipality shall notify the commissioner by sending, not less than 10 working days before the public hearing on the application, notice of the hearing and a copy of the application.

(b) The commissioner may submit any written or oral comments regarding the effect of the proposed activity on the dunes that protect state-owned land, shores, and submerged land.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 26, eff. June 7, 1991.

Sec. 63.057. PERMIT FOR CERTAIN ACTIVITY PROHIBITED. (a) No permit may be issued that allows the operation of a recreational vehicle on a sand dune seaward of the dune protection line.

(b) No permit may be issued that allows any activity in a critical dune area inconsistent with rules promulgated by the commissioner for protection of critical dune areas.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 27, eff. June 7, 1991.

SUBCHAPTER D. PROHIBITIONS

Sec. 63.091. CONDUCT PROHIBITED. Unless a permit is properly issued authorizing the conduct, no person may damage, destroy, or remove a sand dune or portion of a sand dune seaward of a dune protection line or within a critical dune area or kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 3, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, Sec. 28, eff. June 7, 1991.

Sec. 63.093. PROHIBITED OPERATION OF RECREATIONAL VEHICLES. No person may operate a recreational vehicle on a sand dune seaward of the dune protection line in any county in which a

dune protection line has been established.
Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. CRITICAL DUNE AREAS

Sec. 63.121. IDENTIFICATION OF CRITICAL DUNE AREAS. The commissioner, in his role as trustee of the public land of this state, shall identify the critical dune areas within 1,000 feet of mean high tide that are essential to the protection of state-owned land, public beaches, and submerged land. The commissioner shall promulgate rules for the identification and protection of critical dune areas.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 30, eff. June 7, 1991.

Sec. 63.122. NOTICE TO COUNTIES. After the commissioner has identified the critical dune areas, notice of the critical dune areas and the rules for their protection shall be given to the commissioners court of each county and the governing body of each municipality in which one or more of these areas is located.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 30, eff. June 7, 1991.

SUBCHAPTER F. APPEALS

Sec. 63.151. APPEAL BY LITTORAL OWNER. A littoral owner aggrieved by a decision of the commissioners court or governing body of the municipality under this chapter may appeal to a district court in that county.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 31, eff. June 7, 1991.

Sec. 63.152. APPEAL BY COMMISSIONER. The commissioner may appeal to a district court of that county any decision of the commissioners court or governing body of the municipality that the commissioner determines to be a violation of this chapter.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 31, eff. June 7, 1991.

SUBCHAPTER G. PENALTIES

Sec. 63.181. ENFORCEMENT. (a) Any county attorney, district attorney, or criminal district attorney, or the attorney general at the request of the commissioner, shall file in a district court of Travis County or in the county in which the violation occurred a suit to obtain either a temporary or permanent court order or injunction to prohibit and remedy any violation of this chapter or any rule, permit, or order under this chapter and to collect damages to natural resources injured by the violation and to recover civil penalties.

(b) A person who violates this chapter or any rule, permit, or order under this chapter is liable for a civil penalty of not less than \$50 nor more than \$1,000. Each day that a violation occurs or continues constitutes a separate offense.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 32, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 8, eff. June 18, 2003.